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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA,)	NO. CV 15-2566
)	
Plaintiff,)	<u>VERIFIED COMPLAINT FOR</u>
)	<u>FORFEITURE</u>
v.)	
)	[19 U.S.C. § 1595a; 16 U.S.C.
\$1,230,488.00 AS SUBSTITUTE)	§ 2439;]
RES,)	
)	[N.O.A.A.]
Defendant.)	
)	

The United States of America brings this claim against the defendant \$1,230.488.00 as substitute res, and alleges as follows:

JURISDICTION AND VENUE

1 1. The government brings this in rem forfeiture action
2 pursuant to 19 U.S.C. § 1595a and 16 U.S.C. § 2439.

3 2. This court has jurisdiction over the matter under 16
4 U.S.C. § 2440 and 28 U.S.C. §§ 1345 and 1355.

5 3. Venue lies in this district pursuant to 28 U.S.C.
6 § 1395.

7 PERSONS AND ENTITIES

8 4. The plaintiff is the United States of America.

9 5. The defendant is \$1,230,488.00 (the "defendant
10 funds"). The defendant funds represent the proceeds of the
11 court-ordered sale of approximately 118,000 pounds of frozen
12 toothfish seized on May 1, 2014 from the Port of Los Angeles, in
13 Los Angeles County, California.

14 6. The defendant funds are currently in the custody of
15 the National Oceanic and Atmospheric Administration ("NOAA"),
16 where they will remain subject to this Court's jurisdiction
17 during the pendency of this action.

18 7. The interests of Sedna Industries, Inc., the owner of
19 the seized toothfish, may be adversely affected by these
20 proceedings.

21 EVIDENCE SUPPORTING FORFEITURE

22 8. Patagonian toothfish (*Dissostichus eleginoides*) is a
23 long-lived, slow-growing, deep sea species of fish found along
24 shelves and ledges adjacent to islands and landmasses in the
25 Southern Ocean between South America, South Africa, Australia,
26 New Zealand, and Antarctic waters. Along with its cousin, the
27 Antarctic toothfish (*Dissostichus mawsoni*), this species is
28 internationally regarded as amongst the most vulnerable to the

1 effects of over-fishing, due to its biological characteristics,
2 and illegal harvest due to the high market demand for the fish,
3 and the resultant high dockside prices. This conduct is
4 described by the Food and Agricultural organization of the
5 United Nations as "IUU": that is, Illegal, Unreported, and
6 Unregulated Fishing.

7 9. The United States is a Party to the Convention on the
8 Conservation of Antarctic Marine Living Resources
9 ("Convention"), which seeks to conserve Antarctic marine living
10 resources, including toothfish. The Convention also established
11 a Commission for the Conservation of Antarctic Marine Living
12 Resources ("CCAMLR"), whose functions include formulation and
13 adoption of Conservation Measures necessary for the fulfilment
14 of the objectives of the Convention. These Measures are
15 generally binding on all Members of CCAMLR, including the United
16 States.

17 10. In 2003, CCAMLR adopted Conservation Measure 10-05,
18 which implements a catch documentation system for toothfish. The
19 purpose of the documentation system is to track toothfish from
20 harvest to country of final import for consumption so that
21 CCAMLR members can determine if the fish was caught in a manner
22 consistent with CCAMLR conservation measures and prevent the
23 trade in IUU fish. The United States implements the Convention,
24 and the binding Conservation Measures adopted by CCAMLR,
25 pursuant to 16 U.S.C. § 2436.

26 11. Two Russian fishing vessels, the Sparta and the
27 Ugulan, fished for Antarctic toothfish in the Ross Sea between
28 December 26, 2013 and January 26, 2014. The Sparta transshipped

1 approximately 25,000 kilograms of toothfish to the Ugulan on
2 February 8, 2014. The Ugulan had already been carrying
3 approximately 27,000 kilograms of toothfish at the time the
4 toothfish were transshipped from the Sparta. The Ugulan arrived
5 at the port of Lyttleton, New Zealand on or about February 10,
6 2014 with its cargo of approximately 118,000 pounds of
7 toothfish.

8 12. The Ugulan was inspected by New Zealand officials on
9 February 11, 2014. At no time were New Zealand officials
10 provided the completed Dissostichus Catch Document ("DCD") for
11 the toothfish, as required by the CCAMLR Catch Documentation
12 Scheme ("CDS"). As a result of the failure to comply with the
13 CCAMLR CDS, the toothfish were never officially landed in New
14 Zealand. Because the toothfish were not officially landed, New
15 Zealand could not issue the Dissostichus export document
16 ("DED"), as required by the CCAMLR CDS.

17 13. Despite not having received the required DED from New
18 Zealand, the toothfish were shipped from New Zealand to the
19 United States onboard the HS Bizet.

20 14. No preapproval certification was obtained for import of
21 the shipment as required under the Antarctic Marine Living
22 Resources Conventions Act (Act) (16 U.S.C. § 2431, et seq.) and
23 its implementing regulations at 50 C.F.R. § 300.114.

24 15. On May 1, 2014, the toothfish were seized upon import
25 for a violation of the Act. Pursuant to 16 U.S.C. § 2435(2), it
26 is unlawful for any person to violate any regulation promulgated
27 under the Act. The importation of the toothfish violated
28 several regulations promulgated under the Act including, but not

1 limited to, 50 C.F.R. §§ 300.107 (catch documentation), 300.114
2 (pre-approval for import), and 300.117 (importation without
3 documentation or preapproval).

4 15. On October 29, 2014, the United States District Court
5 (CR Misc. No. 14-00581) ordered that the government be permitted
6 to sell the seized toothfish and that any proceeds of the sale
7 be deposited into the NOAA Suspense Account to await the final
8 determination of forfeiture proceedings. The proceeds were
9 ordered held subject to the claims of parties in interest to the
10 same extent as the seized toothfish would have been subject to
11 such claims.

12 16. On November 28, 2014, after a one-week online auction,
13 the toothfish were sold for \$1,230,488.00.

14 CLAIM FOR RELIEF

15 17. Based on the above, plaintiff alleges that the
16 defendant funds represent the proceeds of the sale of an
17 Antarctic marine living resource (here, the toothfish) with
18 respect to which an act prohibited by 16 U.S.C. § 2435 was
19 committed, namely the violations of several regulations
20 promulgated under the Act including, but not limited to, 50
21 C.F.R. §§ 300.107, 300.114, and 300.117. The defendant funds
22 are therefore subject to forfeiture pursuant to 16 U.S.C.
23 § 2439. In addition, the defendant funds represent the proceeds
24 of the sale of merchandize (here, the toothfish) whose
25 importation or entry required a license, permit, or other
26 authorization of an agency of the United States Government and
27 such merchandize was not accompanied by such license, permit, or
28

1 authorization. The defendant funds are therefore subject to
2 forfeiture pursuant to 19 U.S.C. § 1595a.

3 WHEREFORE, plaintiff United States of America prays that:

4 (a) due process issue to enforce the forfeiture of
5 the defendant funds;

6 (b) due notice be given to all interested parties to
7 appear and show cause why forfeiture should not be decreed;

8 (c) this Court decree forfeiture of the defendant
9 funds to the United States of America for disposition according
10 to law; and

11 (d) for such other and further relief as this Court
12 may deem just and proper, together with the costs and
13 disbursements of this action.

14
15 DATED: April 7, 2015

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ROBERT E. DUGDALE
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Chief, Criminal Division
STEVEN R. WELK
Assistant United States Attorney
Chief, Asset Forfeiture Section

19
20 /s/Jonathan Galatzan
21 JONATHAN GALATZAN
Assistant United States Attorney

22 Attorneys for Plaintiff
23 United States of America
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25
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28

VERIFICATION

I, Michelle Zetwo, hereby declare that:

1. I am a Special Agent with the National Oceanic and Atmospheric Association.

2. I have read the above Complaint for Forfeiture and know the contents thereof.

3. The information contained in the Complaint is either known to me personally or was furnished to me by official government sources. I am informed and believe that the allegations set out in the Complaint are true.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on April 2, 2015 at San Diego, California.



Michelle Zetwo